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POLICE DEPARTMENT, CHIEF WAYNE
7 TUCKER, SGT. BERNARD ORTIZ

8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**
12

13 MIGUEL ORTEGA, BENJAMIN ORTEGA,

14 Plaintiffs,

15 v.

16 CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
17 Capacity as the Police Chief of the City of
Oakland, RAMON J. ALCANTAR, Individually
18 and in his capacity as a Police Officer for the
City of Oakland, B. ORTIZ, Individually and in
19 his capacity as a Police Officer for the City of
Oakland, DOES 1 THROUGH 200,

20 Defendants.
21

Case No. C-07-02659 (JCS)

**PROPOSED ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Date: September 19, 2008
Time: 9:30 a.m.
Dept.: Courtroom A, 15th Floor
The Honorable Joseph C. Spero

22 The motion for partial summary judgment by Defendants came on for hearing before this
23 Court, the Honorable Joseph C. Spero presiding, on September 19, 2008, at 9:30 a.m. Kandis A.
24 Westmore, Deputy City Attorney, with the Office of the City Attorney of Oakland appeared for
25 Defendants, City of Oakland, Wayne Tucker and Bernard Ortiz. Brenda Posada, Esq., appeared on
26 behalf of Plaintiffs, Miguel Ortega and Benjamin Ortega.

1 Upon consideration of the argument of counsel, the moving papers and supporting evidence
 2 attached thereto, opposition thereto and the reply memorandum, the Court hereby grants
 3 defendants' motion for partial summary judgment.

4 IT IS HEREBY ORDERED that Defendants' Motion for Partial Summary Judgment is
 5 granted and judgment entered on behalf of Defendants City of Oakland, Wayne Tucker and Bernard
 6 Ortiz as follows:

7 Summary Judgment is granted in favor of Defendant Bernard Ortiz on the First, Second¹,
 8 Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Tenth causes of action alleged in the Second
 9 Amended Complaint.

10 Summary Judgment is granted in favor of Defendant Wayne Tucker on the First,² Second,
 11 Third, and Eighth causes of action. The court notes that Defendants' motion to strike the 9th Cause
 12 of Action alleged against Chief Tucker and the City is pending.

13 Summary Judgment is granted in favor of the City of Oakland on the First³, Second, and
 14 Third⁴ causes of action.

15 IT IS SO ORDERED.

16
 17 DATED: _____

18 _____
 19 JUDGE JOSEPH C. SPERO
 20 UNITED STATES DISTRICT JUDGE

21 _____
 22 ¹ The SAC appears to name Ortiz under the *Monell* cause of action against the City. This is
 23 improper because Ortiz is being sued in his individual capacity in the first cause of action for the
 24 same alleged constitutional violations. The Monell standard does not apply to individual
 25 defendants.

26 ² Chief Tucker is being sued in his official capacity only and there are no allegations of his
 personal involvement in the alleged violations.

³ The City is listed under the first cause of action. However, the City is not a proper defendant
 under that cause of action and is properly named under the second cause of action *Monell* claim.

⁴ There are no Monell allegations in the SAC for the Third Cause of action.